PUBLIC PROSECUTOR v. FOO DOO CHEONG

[A.C.J. (Adams J.) August 10, 1961]

[Muar — Criminal Appeal No. 22 of 1961]

Road Traffic — Carrying a pillion rider on a motor cycle contrary to rule 16(a) of the Motor Vehicles (Driving Licence) Rules, 1959 — Interpretation of rules 16(a) and 16(b) — Failure to comply with rule 16(c) — Adequacy of fine — Road Traffic Ordinance, 1958.

On a true construction of rule 16(a) of the Motor Vehicles (Driving Licence) Rules, 1959, it is not necessary for a solo motor cyclist to carry a supervising person on his motor cycle who holds a licence, not being a learner's licence, to drive a motor cycle.

However, rule 16(b) of the same Rules lays down that no passenger may be carried who is not one holding a driving licence, other than a learner's licence, to drive a vehicle which the learner is authorised to drive.

Where, therefore, a passenger is carried on a solo motor cycle, and the passenger is not one in possession of a driving licence, other than a learner's licence, to drive a solo motor cycle, an offence is committed.

Observations on the seriousness of the offence of driving without "L" plates under rule 16(c).

CRIMINAL APPEAL.

Hamzah bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Adams J. (delivering oral judgment): This is an appeal by the Public Prosecutor against the refusal of the learned Magistrate to try a second charge against the defendant on the ground that the charge disclosed no offence. The second charge reads as follows:

"That you on the same day, time and place, in the District of Batu Pahat, in the State of Johore, being the rider of motor cycle No. JB. 509 and holder of a Provisional Driving Licence did fail to comply with one of the conditions subject to which it was granted, to wit, did carry a person on the said vehicle contrary to rule 16(a) of the Motor Vehicles (Driving Licence) Rules, 1959, and that you have thereby committed an offence under section 28(4) of the Road Traffic Ordinance, 49/58 and punishable under section 146(1) of the said Ordinance."

The facts relating to the offence are that the defendant was found driving a solo motor cycle on the 25th of June, 1960, at Jalan Penggaram. He was found to be the holder of a provisional driving licence and was not displaying 'L' plates. At the same time he was carrying a pillion passenger who did not hold a licence to drive any motor vehicle.

The learned Magistrate in his very well reasoned grounds of decision has argued that the rule 16(a) of the Motor Vehicles (Driving Licence) Rules, 1959, does away with the necessity for a solo motor cyclist to carry a person on his solo motor cycle who holds a licence not being a learner's licence authorising him to drive a vehicle of the same class as the vehicle driven by the holder of the learner's licence. Therefore the defendant certainly could not have committed an offence under rule 16(a). The Magistrate is quite right on this point as far as it goes.

Rule 16(a) of the Motor Vehicles (Driving Licence) Rules, 1959, was amended in 1960 by L.N. 26/60 and it follows word for word the amended regulation 16 of the Motor Vehicles (Driving Licences) Regulations, 1950 of the United Kingdom which were also amended in that year. It will be noticed that regulation 16(b) of the United Kingdom Regulations makes it unlawful for a solo motor cyclist to carry a passenger unless that passenger himself is the holder of a driving licence not being provisional licence authorising him to drive a motor bicycle having been the holder of a licence for at least two years or having passed the test.

Rule 16(b) of the Federation Motor Vehicles (Driving Licence) Rules, 1959, however, reads as follows:

"He shall carry no passengers other than the person exercising supervision in accordance with paragraph (a) of this rule and if he is driving a goods vehicle, an attendant who shall be carried in the rear of the vehicle so placed that he can signal to overtaking traffic and to the driver of the vehicle the approach of such traffic;"

The proviso to rule 16(a) therefore permits the owner of a solo motor bicycle *to use* the solo motor cycle without being under the supervision of a qualified driver but rule 16(b) makes it a condition of his learner's licence that he *shall carry* no passengers other than a person exercising supervision in accordance with paragraph (a) of rule 16. It follows from this therefore that although he may use his *solo* motor bicycle without being under the supervision of a qualified driver within the meaning of rule 16(a) he may not *carry* any passenger unless he complies with rule 16(b). Therefore if he does carry one, he must carry a passenger who can exercise the supervision required under section 16(a) and if he does not do so he commits an offence.

In my view therefore the Magistrate was wrong in holding that no offence had been disclosed by the charge and the case must go back to the Magistrate with a direction that he takes the defence plea and proceed with the trial.

There is one other matter for the guidance of Magistrates. I consider that a fine of $15 for failing to display 'L' plates is manifestly inadequate. The law provides that 'L' plates shall be carried for the very good purpose of warning other road users that the person driving is not a qualified driver which enables both pedestrians and cyclists and other drivers of motor vehicles to take extra care when they see such a vehicle being used on the roads. The failure to comply with rule 16(c) is a serious offence and should be dealt with as such and not as a minor breach of a technical provision of the law.

Case remitted to the Magistrate.

PUBLIC PROSECUTOR v. KOH CHIN MONG

[A.C.J. (Adams J.) August 10, 1961]

[Muar — Criminal Appeal No. 28 of 1961]

Road Traffic — Licence — Vehicle without licence and certificate of insurance — Whether onus on prosecution or defence — Road Traffic Ordinance, 1958, ss.22(1) and 74(2) — Evidence Ordinance, 1950, s.106.

Where the charge is one for doing something under the Road Traffic Ordinance, 1958, for which a licence is required under that Ordinance, the burden of proof is upon the accused to show that he was in possession of the necessary licence.

Cases referred to:—

(1) *Public Prosecutor* v. *Chin Yoke*, [1940] M.L.J. 47.

(2) *Khoo Teck Yam* v. *Public Prosecutor*, [1955] M.L.J. 112.

(3) *Rex* v. *Oliver*, [1944] K.B. 68.

(4) *John* v. *Humphreys*, [1955] 1 W.L.R. 325.

CRIMINAL APPEAL.

Hamzah bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Adams J. (delivering oral judgment): The defendant stands charged with two charges of using a motor car without there being in force in respect to the said vehicle a motor vehicle licence contrary to section 22(1) of the Road Traffic Ordinance, 1958, and secondly, that the defendant used the motor vehicle without there being in force in relation to the motor vehicle a policy of insurance in respect to third party risks contrary to section 74(2) of the Road Traffic Ordinance.

The evidence established that on the 23rd August, 1960, P.C.3217 Lim Kim Sai saw the defendant driving the motor vehicle named in the charge. He stopped the motor vehicle and found that it had no current motor vehicle licence. The defendant was unable to produce any certificate of insurance in respect to the vehicle.

The learned Magistrate, Batu Pahat, discharged the accused without calling upon the defence on the grounds apparently submitted by Mr. Paramjothy that the prosecution should have produced some certificate or other evidence to prove that the vehicle was not in fact licensed and there was not in fact a certificate of insurance in respect thereto.

I was under the impression that this matter had been settled once and for all by the case of *Public Prosecutor* v. *Chin Yoke* [1] which was followed in *Khoo Teck Yam* v. *Public Prosecutor* [2]. If any more support were needed for the proposition that in a prosecution for an offence of doing something for which a licence is required under the Road Traffic Ordinance, it is unnecessary to call a licensing officer to prove the non-issue of the licence and that the burden is on the accused to negative the averment of being unlicensed by producing in this case (a) the vehicle licence, and (b) the certificate of insurance, there are the two further cases of *Rex* v. *Oliver* [3] and *John* v. *Humphreys* [4]. All the above cases apply in practice the proposition of law laid down by section 106 of the Evidence Ordinance of which both the learned Magistrate and Mr. Paramjothy must be well aware.

The order of acquittal is set aside and the case must go back to the Magistrate with a direction that he call upon the defence.

I would suggest that the Magistrate, Batu Pahat reads his Evidence Ordinance and his cases and applies what he has read to the facts of the case to be decided.

Order accordingly.

CHEN FAN CHIANG v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ.A.) August 14, 1961]

[K.L. — F.M. Criminal Appeal No. 19 of 1961]

Criminal Law and Procedure — Murder — Penal Code, s.302 — Killing in the presence of several witnesses — Conflicting evidence of witnesses — Availability of evidence for jury to find culpable homicide not amounting to murder — Possible verdict of culpable homicide not amounting to murder not left to jury — Statement of witness sought to be used under Criminal Procedure Code (Cap. 6), s.113(ii) — Effect of failure of trial Judge to allow it to be used to impeach credit of witness.

On a charge of murder where there is evidence, whether reliable or not, which if accepted would entitle the jury to bring in a verdict of culpable homicide not amounting to murder, the charge to the jury must leave open the possibility of bringing in a verdict of culpable homicide not amounting to murder even if no defence is relied upon which would reduce the charge from one of murder to one of culpable homicide not amounting to murder.

Observations upon effect of trial Judge's failure to permit a statement of a witness to be used to impeach credit of witness under section 113(ii) of the Criminal Procedure Code.

Cases referred to:—

(1) *R.* v. *Hopper*, [1915] 2 K.B. 431.

(2) *Kwaku Mensah* v. *The King*, [1946] A.C. 83.

(3) *Bullard* v. *The Queen*, [1957] A.C. 635.

COURT OF APPEAL (CRIMINAL).

David Marshall for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted for murder at the Johore Bahru Assizes on 9th July this year and was sentenced to death. Against that conviction he has now appealed.

The charge against the appellant was that on 2nd February, sometime before dawn, in or close to a bus at the entrance to an estate at Kulai he killed one Moo Kim Sang in circumstances which made the killing murder.

There is no doubt that at the time and place in question Moo Kim Sang was killed by the insertion of a rubber-tapping knife into a vital